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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.       | CONFIRMATION NO.       |
|---|-------------|----------------------|---------------------------|------------------------|
| 09/683,706  | 02/05/2002  | Michael John Curry   | 1049.001US1               | 6456                   |
| 23441 7590 11/27/2007<br>LAW OFFICES OF MICHAEL DRYJA<br>1474 N COOPER RD #105-248<br>GILBERT, AZ 85233 |             |                      | EXAMINER<br>NGUYEN, VAN H |                        |
|   |             |                      | ART UNIT<br>2194          | PAPER NUMBER           |
|   |             |                      | MAIL DATE<br>11/27/2007   | DELIVERY MODE<br>PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/683,706

Applicant(s)

CURRY ET AL.

Examiner

VAN H. NGUYEN

Art Unit

2194

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

1. This action is responsive to Appeal Brief filed 08/09/2007.

Claims 1-20 are currently pending in this application. Claims 1, 12, and 19 are independent claims.

In view of the Appeal Brief filed on 08/09/2007, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below.

## Specification

2. **Applicant is reminded of the proper language and format for an abstract of the disclosure.**

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

*The language should be clear and concise and should not repeat information given in the title.* It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

### Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-20 are rejected under 35 U.S.C. 102(e) as being anticipated by **Helferich et al.** (US 6826407 B1).

#### **As to claim 1:**

Helferich teaches (*see the title; abstract; col.3, line 19-col.4, line 6; see also, the discussion beginning at col.4, line 46*) a system (*a communication system for integrating audio and visual messaging*) comprising:

an operating system (*operating system*);

an application program running on the operating system; and, an audio or video program running on the operating system, the audio or video program separate from but integrated with the application program such that the application program is unaware that the audio or video program has been integrated therewith, such that a user of the

application program interacts with the audio or video program as though the audio or video program were part of the application program *(a communication system for integrating audio and visual messaging. The communication system includes a communication device for receiving visual messages and for transmitting voice messages to a recipient, and an integrated mail gateway for receiving from the communication device a voice message and addressing information. The integrated mail gateway is programmed to create an electronic mail (hereinafter "e-mail") message comprising the voice message. The integrated mail gateway is also programmed to use the addressing information to address the e-mail message, and to send the addressed e-mail message to the recipient...the communication system is used by a user of a communication device to send a voice message in reply to a received visual message...The IMG records and stores the voice reply message. Optionally, the IMG will format the voice reply message into a conventional audio file format. The IMG then creates an e-mail message and includes the voice reply message in the e-mail).*

**As to claim 2:**

Helferich teaches the audio or video program is integrated with the application program by detecting when an event related to the application program occurs *(see Figs. 7-8 and the associated text).*

**As to claim 3:**

Helferich teaches the audio or video program is further integrated with the application program by subclassing into a window of the application program (*see Figs. 7-8 and the associated text*).

**As to claim 4:**

Helferich teaches the audio or video program is further integrated with the application program by hooking into a window of the application program (*see Figs. 7-8 and the associated text*).

**As to claim 5:**

Helferich teaches the audio or video program is integrated with the application program by employing a customization mechanism of the application program (*see Figs. 7-8 and the associated text*).

**As to claim 6:**

Helferich teaches the audio or video program is integrated with the application program by employing application programming interfaces of the application program (*see Figs. 7-8 and the associated text*).

**As to claim 7:**

Helferich teaches the audio or video program modifies contents of a window of the application program created through the operating system (*see Figs. 7-8 and the associated text*).

**As to claim 8:**

Helferich teaches the audio or video program runs in a window created through the operating system and related to a window of the application program created through the operating system (*see Figs. 7-8 and the associated text*).

**As to claim 9:**

Helferich teaches the application program comprises, among other things, an email program (*programmed to create an e-mail message/ email-software; col.3, line 19-col.4, line 6; see also, the discussion beginning at col.4, line 46*).

**As to claim 10:**

Helferich teaches the audio or video program comprises, among other things, an audio player program (*see Figs. 7-8 and the associated text*).

**As to claim 11:**

Helferich teaches the audio or video program comprises, among other things, an audio-only program (*see Figs. 7-8 and the associated text*).

**As to claim 12:**

Helferich teaches a method (*see the title; abstract; col.3, line 19-col.4, line 6; Figs. 1-9; see also, the discussion beginning at col.4, line 46*) comprising: detecting when an event related to a predetermined application program occurs; in response to detecting when the event has occurred, an audio or video program presenting one or more audio or video controls for use in conjunction with the predetermined application program, such that the audio or video program encompassing the one or more audio or video controls is integrated with the predetermined application program, the audio or video program being separate from the predetermined application program (*a communication system for integrating audio and visual messaging. The communication system includes a communication device for receiving visual messages and for transmitting voice messages to a recipient, and an integrated mail gateway for receiving from the communication device a voice message and addressing information. The integrated mail gateway is programmed to create an electronic mail (hereinafter "e-mail") message comprising the voice message. The integrated mail gateway is also programmed to use the addressing information to address the e-mail message, and to send the addressed e-mail message to the recipient...the communication system is used by a user of a communication device to*

*send a voice message in reply to a received visual message...The IMG records and stores the voice reply message. Optionally, the IMG will format the voice reply message into a conventional audio file format. The IMG then creates an e-mail message and includes the voice reply message in the e-mail).*

**As to claim 13:**

Helferich teaches presenting the one or more audio or video controls comprises integrating the one or more audio or video controls within a window of the predetermined application program (*see Figs. 7-8 and the associated text*).

**As to claim 14:**

Helferich teaches presenting the one or more audio or video controls comprises creating an audio or video program window through an operating system in which the one or more audio or video controls are located (*see Figs. 7-8 and the associated text*).

**As to claims 15-18:**

Note the rejection of claims 3-6 supra. Claims 15-18 are the same as claims 3-6, except claims 15-18 are method claims and claims 3-6 are system claims.

**As to claim 19:**

Note the rejection of claim 12 supra. Claim 19 is the same as claim 12, except claim 19 is a computer-readable medium claim and claim 12 is a method claim.

**As to claim 20:**

Helferich teaches the predetermined application program, among other things, an email program (*programmed to create an e-mail message/ email-software; col.3, line 19-col.4, line 6; see also, the discussion beginning at col.4, line 46*).

**Response to Arguments**

4. Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

During patent examination, the pending claims must be "given their broadest reasonable interpretation consistent with the specification." In re Hyatt 21 1 F.3d 1367, 1372, 54 USPQ2d 1664, 1667 (Fed. Cir. 2000). Applicant always has the opportunity to amend the claims during prosecution, and broad interpretation by the examiner reduces the possibility that the claim, once issued, will be interpreted more broadly than is justified. In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-51 (CCPA 1969). See also In re Zletz, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (1989) "During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow.... The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed.... An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process."

Applicant should set forth claims in language that clearly, distinctly, unambiguously, and uniquely define the invention.

### Contact Information

5. Any inquiry or a general nature or relating to the status of this application should be directed to the TC 2100 Group receptionist: (571) 272-2100.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VAN H. NGUYEN whose telephone number is (571) 272-3765. The examiner can normally be reached on Monday-Thursday from 8:30AM 6:00PM. The examiner can also be reached on alternative Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, WILLIAM THOMSON can be reached at (571) 272-3718.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



**VAN H. NGUYEN**  
**PRIMARY EXAMINER**



**WILLIAM THOMSON**  
**SUPERVISORY PATENT EXAMINER**